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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/045,277	01/10/2002	Faisal M. Awada	AUS920010865US1	4449

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EXAMINER	
DIVECHA, KAMAL B	

ART UNIT	PAPER NUMBER
2151	

DATE MAILED: 11/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/045,277	AWADA ET AL.	
	Examiner	Art Unit	
	KAMAL B. DIVECHA	2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *14 September 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *21-28* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *21-28* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Arguments

Claims 21-28 are pending in this application.

Applicant has cancelled claims 1-20 in response filed September 14, 2005.

Applicant's arguments with respect to claims 21-28 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the **first paragraph of 35 U.S.C. 112:**

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 21-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The claims recite the limitation of "determining whether the resource is presently assigned to a partition requesting usage of the resource"; "consulting the file to determine, upon receiving the request from the requesting partition, whether the requesting partition may use the resource if the resource is not presently assigned to the requesting partition"; "determining, if the requesting partition may use the resource, whether the resource is presently being used by another partition"; "automatically reassigning the resource to the requesting partition if the resource is not being used by another partition"; and "re-assigning the resource back to the partition to which the resource was originally assigned if the requesting partition is not the

partition to which the resource was originally assigned and the requesting partition has terminated using the resource". However, the specification merely describes a process wherein a check is made to determine whether a request to use the device has been sent by a partition. If so, the table is consulted to determine whether the partition is allowed to use the device. If so, another check is made to determine **whether the device is currently is use by another partition.** Only devices that are idle are reassigned. Thus if the device is presently in use, it will not be reassigned right away (fig. 6 and applicants specification, page 11-12), hence, the above claimed limitation presents new subject matter situations and was not described in the specification in such a way to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The following is a quotation of the **second paragraph of 35 U.S.C. 112:**

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 21-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 recites the limitation "the system", "the request" and "the requesting partition" in the claim. There is insufficient antecedent basis for this limitation in the claim.

Regarding claim 21, the phrase "may" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Please note that the phrase "may" does not limit the claim to be limited to the claimed subject matter. In other words it is unsure that the process including the phrase "may"

would be conducted, whereas the limitation could also be interpreted as not the part of the claimed invention or subject matter.

Claims 23-28 are rejected for the same reasons as set forth in claim 21.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 21-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tarui et al. (hereinafter Tarui, Pub. No.: US 2002/0112102 A1) in view of Zalewski et al. (hereinafter Zalewski, U. S. Patent No. 6,542,926 B2).

As per claim 21, Tarui discloses a method of allowing a resource to be shared by a plurality of partitions of a logically partitioned system, comprising the steps of: originally assigning the resource to one partition (page 3, block [0051-0053]); indicating in a file all

partitions of the system that may use the resource (page 7 block [0135]; page 6 block [0096]; fig. 2A); determining whether the resource is presently assigned to a partition requesting usage of the resource (page 7 block [0122]; fig. 20 item #7205); determining, if the requesting partition may use the resource, whether the resource is presently being used by another partition (fig. 20 item #7205, #7207 and fig. 19 item #7100, 7101); and automatically reassigning the resource to the requesting partition if the resource is not being used by another partition (page 5 block [0083]-[0084]; page 6 block [0112]-[0118]; page 7 block [0122]; fig. 20 item #7206, 7208), however Tarui does not disclose the process of consulting the file to determine, upon receiving the request from the requesting partition, whether the requesting partition may use the resource if the resource is not presently assigned to the requesting partition; and re-assigning the resource back to the partition to which the resource was originally assigned if the requesting partition is no the partition to which the resource was originally assigned and the requesting partition has terminated using the resource.

Zalewski, from the same field of endeavor, discloses the process of indicating in a file all partitions of the system that may use the resource (col. 8 L6-17); consulting the file to determine upon the request whether the requesting partition may use the resource if the resource is not presently assigned to the requesting partition (col. 18 L36 to col. 19 L36); and re-assigning the resource back to the partition to which the resource was originally assigned if the requesting partition is not the partition to which the resource was originally assigned and the requesting partition has terminated using the resource (i.e. interpret it as loaning the resources temporarily to other partitions which must return it when it discontinues the use of the resources, i.e. terminates using the device, col. 19 L5 to col. 20 L38; col. 21 L30 to col. 22 L24; and col. 7 L42-

57). Therefore it would have been obvious to a person of ordinary skilled in the art at the time the invention was made to modify Tarui in view of Zalewski, in order to consult a file to determine whether the requester can use the resource if the resource is not being used and re-assign the resource back to the original partition after the requester has terminated using the resource, since Zalewski teaches the process of consulting a file to determine whether the requester can use the resource if the resource is free and reassigning resource back to the original owner.

One of ordinary skilled in the art would have been motivated because by consulting the information in the file would have determined to which hardware resources the operating system (requesting partition) it has access (Zalewski, col. 18 L47-49). Secondly, resources are temporarily loaned to another partition, which is in an uninitialized state due to lack of sufficient resources, at power up to run primary CPU, that must be returned to its original owner after its done using the resource which would further prevent the resources from joining any operating system instances (Zalewski, col. 7 L49-57 and col. 19 L35-65, col. 20 L24-26). '

As per claim 22, Tarui discloses a process wherein when there is no surplus in resources of other partitions (i.e. resource is being used by other partition), a record is made in a log as "impossible to perform SLA" (i.e. requesting partition is notified, page 7, block [0122]; fig. 20 item #7209; Zalewski, col. 21 L30-35).

As per claims 23-28, they do not teach or further define over the limitations in claims 21-22. Therefore claims 23-28 are rejected for the same reasons as set forth in claims 21-22.

Additional References

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Kauffman, U. S. Patent No. 6,633,916 B2.

b. Kleinsorge et al., U. S. Patent No. 6,226,734 B1.

c. Surugucchi et al., U. S. Patent No. 6,094,699.

d. Kleinsorge et al., U. S. Patent No. 6,247,109 B1.

e. Kauffman et al., U. S. Patent No. 6,332,180 B1.

f. Noel et al., U. S. Patent No. 6,381,682 B2.

g. Zalewski et al., U. S. Patent No. 6,647,508 B2.

h. Uchishiba et al., Pub. No.: US 2002/0016812 A1.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is 571-272-5863. The examiner can normally be reached on Flex schedule 8 hr days (10.00am-6.30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 2, 2005.

ZARNI MAUNG
SUPERVISORY PATENT EXAMINER